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May 3, 2010

Mr. Matt Rector and Members of the Executive Council
Guam Federation of Teachers
P.O. Box 2301
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Guam's Local Union

RECEIVED

By: gm
Date: 5/3/10 4:14pm

Dear Mr. Rector and Members of the Executive Council:

Our firm has been retained by GFT member Carol Somerfleck regarding the Notice of Hearing and Summons ("Notice") received by her on April 26, 2010.

We object to the Notice and request that it immediately be rescinded and that the hearing be canceled. The Notice clearly fails to comport with even minimum standards of due process in that it is so vague and lacking in specificity as to be no notice at all. Specifically, the Notice fails to describe with specificity what conduct by Ms. Somerfleck is deemed to warrant investigation, and what conduct she is expected to address at the hearing. Ms. Somerfleck can scarcely be expected to prepare a defense when she does not even know the allegations against her. The Notice also fails to meet minimum standards of due process in that it fails to provide our client adequate time to prepare her defense, and it fails to provide notice of the procedures of the hearing or assurances that my client will be permitted legal representation at the hearing.

As you should be aware, the GFT is governed under the Labor Management Reporting and Disclosure Act of 1959 ("LMRDA") which provides a Bill of Rights for members of labor organizations. The Bill of Rights includes safeguards against improper discipline by a union of its members. 29 U.S.C. 411 Sec. 101.(a)(5) of the LMRDA provides:

SAFEGUARDS AGAINST IMPROPER DISCIPLINARY ACTION – No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

It is evident that the Constitution of the GFT is deeply flawed and cannot be reconciled with the due process requirements of the LMRDA. Article V (E) regarding suspension or expulsion by Executive Council states:

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If the executive council is of the opinion that a member has conducted him or herself in a manner that is harmful to the interests of GFT or its members then the Executive Council must hold an enquiry into that member's conduct. The member must be given an opportunity to present his or her case at such an enquiry. The Executive Council may thereafter decide: to excuse the member, suspend the member for a fixed period on such conditions as they deem fit; or expel the member.

The fundamental due process requirement that a union provide its members with "written specific charges" and "reasonable time to prepare his defense" is completely lacking in Article V(E), and in the Notice provided to my client. In light of this, it is apparent that the Executive Board's actions in this matter are so inconsistent with the Bill of Rights that the GFT has no lawful means to suspend or expel any member of the GFT. See 29 U.S.C.411 Sec. 101(b).

This is a serious matter and if the Executive Committee of GFT proceeds under the current Notice, we shall seek protection in the District Court of Guam and ask that any action by the GFT be voided. See *Semancik v. United Mine Workers* 466 F.2d 144, 152 (1972) ("when a labor organization repeatedly utilizes a broad, ill-defined constitutional provision or by-law to harass or infringe upon its members' exercise of their protected rights of free speech, without making an attempt to limit the section to avoid conflict with the LMRDA, it is appropriate for a district court to enjoin permanently any further prosecutions under that section."). *Semancik* at 152.

Finally, should you continue with your proposed hearing, please be aware that courts have also provided for damages directly and proximately resulting from violations of the LMRDA. Courts have found that a complaint alleging injury to reputation coupled with emotional distress was sufficient to state a cause of action. See *Simmons v. Aviscom, Local 713, Textile Workers Union of America*, 350 F.2d 1012, 1019 (4th Cir. 1965); *McCraw v. United Ass'n of Journeymen & App. Plumbing, Etc.*, 341 F. 2d 705, 710 (6th Cir. 1965); *Vars v. Unternational Brotherhood of Boilermakers, Etc.*, 215 F. Supp. 943, 952 (D. Conn.) *aff'd*, 320 F.2d 576 (2d Cir. 1963).

You are further placed on notice that the Act permits the recovery of litigation expenses, including reasonable attorney's fees, in suits. We will also seek an order that GFT be required to pay the litigation expenses, including reasonable attorneys' fees, which Ms. Somerfleck incurs in seeking judicial protection. See *Kerr v., Screen Extras Guild, Inc.*, 466 F.2d 1267 (9th Dir. Sept. 20, 1972).

If the Executive Council decides to proceed with the hearing on Tuesday, May 4, 2010 at 5:30 p.m. as set forth in the Notice, Mrs. Somerfleck will appear with counsel to place her objections on the record. She will not participate further in a hearing for which she has not been

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given specific notice of her alleged misconduct, and a reasonable opportunity to prepare her defense. Please confirm she will be permitted to have counsel with her and that counsel will be permitted to represent her during the hearing. Please be advised that we also intend to record the hearing by video and audio.

I will not be on island tomorrow, and will not return until May 13. In my absence, please direct all communication to attorney Bradley Klemm, Blair Sterling & Johnson (477-4857)(bradklemm@hotmail.com). Mr. Klemm has been authorized by Ms. Somerfleck to handle matters until I return.

Sincerely,



Patrick Civile

cc: John Lund, Director
Office of Labor Management Standards

Dennis Eckert, Western Regional Director
Office of Labor Management Standards

Richard L. Trumka, President
AFL-CIO